

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

TSGT JOSHUA CALDWELL,
Individually and as Administrator of
the Estate of Savannah Caldwell, et
al.,

Plaintiffs

vs.

UNITED STATES OF AMERICA,
Defendant

NO. 1:22-CV-00111-PTG-TCB

JOINT MOTION TO APPROVE SETTLEMENT

The parties move the Court to approve settlement in the above styled matter. The parties would show that this Court has the legal and factual basis to approve the settlement agreed to by the parties.

1. *Legal Basis*

The Federal Tort Claims Act provides that a district court must apply the law of the State in which “the act or omission occurred.” 28 U.S.C. § 1346(b)(1); *see also United States v. St. Louis Univ.*, 336 F.3d 294, 300 (4th Cir. 2003). The parties agree that here, because the alleged wrongful acts or omissions occurred within the Commonwealth of Virginia (at Fort Belvoir, Virginia), Virginia law applies to this action. To that end, Virginia Code § 8.01-55 requires Court approval of compromises of claims for wrongful death. The parties now seek this Court’s approval of their compromise settlement of this civil action in the event that § 8.01-55 constitutes the type

of substantive state law that is applicable to a FTCA action against the United States. *See, e.g., Cibula v. United States*, 551 F.3d 316, 320 (4th Cir. 2009).

The Court has the legal basis to approve settlement between the parties. Federal courts routinely approve settlements in FTCA cases. *Kile v. United States*, 915 F.3d 682, 684–85 (10th Cir. 2019), as corrected (Feb. 15, 2019); *Lossiah v. United States*, No. 1:18-cv-00134, 2021 WL 4073287 (W.D.N.C. Sept. 7, 2021) (wrongful death settlement brought under FTCA); *Harrington v. United States*, No. 4:06-cv-285, 2008 WL 4755589, at *3–4 (S.D. Ga. Oct. 27, 2008). Federal courts approve settlements by ensuring that it is in the best interests of any minor or incompetent adult. *Id. See also Reo v. United States Postal Service*, 98 F.3d 73, 76 (3d Cir.1996); *Jackson v. United States*, No. 3:14-15086, 2016 WL 3826379 (S.D.W. Va. July 13, 2016) (settlement involving minor).

2. Factual Basis

Next, approving the settlement is in the best interests of the statutory beneficiaries B.C. and A.C. Here, the Court-appointed Guardian Ad Litem authored his report and recommended approval of the settlement. *See* ECF No. 30.

Currently, Joshua Caldwell is the sole provider and caregiver for his two children. The breakdown of settlement funds to Mr. Caldwell is appropriate as further explained in the Guardian Ad Litem’s report because, among other things, “Ms. Caldwell’s future lost wages and household services...are now

wages and services that fall on Mr. Caldwell to provide.” *Id.* at 3. The funds going to Mr. Caldwell “will allow him the opportunity to use them for the care and support of his children.” *Id.* at 4.

Next, the Guardian Ad Litem determined that placement of the minor statutory beneficiaries’ settlement funds into a Virginia College Savings Plan is appropriate and permitted. *See* Va. Code §8.01-424(D)(2). The Guardian Ad Litem determined that approving the settlement is in the best interests of the minor statutory beneficiaries B.C. and A.C. Accordingly, the parties have attached as an exhibit to this motion an order that the parties request the Court enter. Plaintiff also attaches to this Motion the Stipulation of Compromise with the United States, which contains the precise terms of the proposed settlement. *See Exhibit 1.*

CONCLUSION

Accordingly, the parties move this Honorable Court for approval of this settlement and for entry of an Order:

- a) Approving settlement of Plaintiff’s claims against the defendant for the sum of Nine Hundred and Sixty-Five Thousand Dollars (\$965,000.00);
- b) Authorizing Plaintiff, on behalf of the Estate of Savannah Caldwell, deceased, to execute a release of any and all of the Estate’s claims against defendant in exchange for the settlement amount of Nine Hundred and Sixty-Five Thousand Dollars (\$965,000.00);
- c) Authorizing distribution as follows:

- i. To the law firm of Whitehurst, Harkness, Brees, Cheng, Alsaffar, Higginbotham, and Jacob, PLLC, in the amount of \$241,250.00 for attorney fees;¹
- ii. To the law firm of Whitehurst, Harkness, Brees, Cheng, Alsaffar, Higginbotham, and Jacob, PLLC, in the amount of \$31,216.10 for reimbursement of advanced litigation costs;²
- iii. To B.C., a minor, in the amount of One Hundred Thousand Dollars (\$100,000.00) to be placed in a Virginia College Savings Plan;
- iv. To A.C., a minor, in the amount of One Hundred Thousand Dollars (\$100,000.00) to be placed in a Virginia College Savings Plan; and
- v. And any remaining amounts, \$492,533.90, to Joshua Caldwell.

The parties request the Court approve this settlement and enter the proposed order attached to this motion.

Respectfully Submitted,

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¹ In accordance with 28 U.S.C. § 2678, the attorneys' fees for services rendered is 25% of the total settlement amount of Nine Hundred Sixty-Five Thousand Dollars (\$965,000).

² Between furnishing the file to the Guardian and the filing of his report, Plaintiffs' counsel have incurred an additional costs, which represent court reporter fees, interest, record fees, research, and travel that were incurred prior to settlement but were not invoiced and paid until after settlement. The Guardian, by his signature below, has reviewed said fees and continue to believe the settlement is in the best interest of the minors.

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